

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KELLY S.,

Plaintiff,

-v-

5:21-CV-1290

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

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Special Ass't U.S. Attorney

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On December 2, 2021, plaintiff Kelly S.¹ (“plaintiff”) filed this action seeking review of the decision of defendant Commissioner of Social Security (“Commissioner” or “defendant”) denying her application for Disability Insurance Benefits (“DIB”) under the Social Security Act (the “Act”).

The Commissioner filed a certified copy of the Administrative Record, Dkt. No. 8, and both parties briefed the matter in accordance with General Order 18, which provides that an appeal taken from the Commissioner’s decision denying benefits will be treated as if the parties have filed cross-motions for a judgment on the pleadings, Dkt. Nos. 11, 12.

On January 3, 2023, shortly after hearing oral argument on the parties’ cross-motions, U.S. Magistrate Judge David E. Peebles advised by Report & Recommendation (“R&R”) that plaintiff’s motion be granted, the Commissioner’s motion be denied, the Commissioner’s decision be vacated, and plaintiff’s claim be remanded for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). Dkt. No. 16.

¹ In accordance with a May 1, 2018 memorandum issued by the Judicial Conference’s Committee on Court Administration and Case Management and adopted as local practice in this District, only the first name and last initial of plaintiff will be mentioned in this opinion.

Neither party has filed objections, and the time period in which to do so has expired. *See* Dkt. No. 16. Upon review for clear error, the R&R is accepted and will be adopted in all respects. *See* FED. R. CIV. P. 72(b).

Therefore, it is

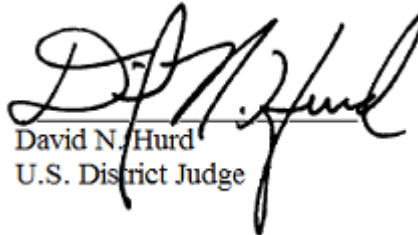
ORDERED that

1. The Report & Recommendation is ACCEPTED;
2. Plaintiff's motion is GRANTED;
3. The Commissioner's motion is DENIED;
4. The Commissioner's decision is VACATED; and
5. This action is REMANDED for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

The Clerk of the Court is directed to enter a judgment accordingly and close the file.

IT IS SO ORDERED.

Dated: January 19, 2023
Utica, New York.



David N. Hurd
U.S. District Judge